

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Electric Market Design and Structure

Docket No. RM01-12-000

**JOINT SMD COMMENTS ON RESOURCE ADEQUACY,
FUNDING OF TRANSMISSION SYSTEM
UPGRADES AND EXPANSIONS, AND OBLIGATIONS
OF MERCHANT TRANSMISSION PROJECTS
RELATED TO SYSTEM EXPANSION**

INTRODUCTION

Avista Corporation, the Bonneville Power Administration (“Bonneville”), Idaho Power Company, Nevada Power Company, NorthWestern Energy (a division of NorthWestern Corporation), PacifiCorp, Puget Sound Energy, Inc., Portland General Electric Company, and Sierra Pacific Power Company (collectively, the “Companies”) submit these comments in the rulemaking of the Federal Energy Regulatory Commission (the “Commission”) under Docket No. RM01-12-000. The Companies, together with British Columbia Hydro and Power Authority, are working in a collaborative process to develop a regional transmission organization known as RTO West. The Commission has assigned Docket No. RT01-35 to the RTO West development process and has issued a number of orders in response to filings submitted by the RTO West filing utilities and various intervenors.¹

¹ In its April 26, 2001 order in Docket No. RT01-35-000, the Commission approved the geographic scope proposed for RTO West, which encompasses all of the Pacific Northwest within the United States and most of the Intermountain West. The Commission encouraged continued efforts to

The Companies submit these comments in response to the Commission's Notice of Proposed Rulemaking issued on July 31, 2002 in Docket No. RM01-12-000 (the "SMD NOPR") and in accordance with the Commission's Notice on Requests for Additional Time issued in the same docket on December 20, 2002 (the "December 20 Notice"). In the December 20 Notice, the Commission stated that it would not alter deadlines it had previously set for submitting comments on the SMD NOPR, but it would accept late-filed comments through February 28, 2003. The Companies' comments below focus on three general subject areas related to the Commission's Standard Market Design ("SMD") initiative: (1) resource adequacy, (2) funding of transmission system upgrades and expansions, and (3) the obligations that should be assumed by merchant transmission projects with respect to subsequent transmission system upgrades and expansions.

For utilities subject to state and provincial regulatory authority, the Companies urge the Commission to recognize that resource adequacy is appropriately addressed through state and public utility regulatory commissions, together with regional institutions that support and coordinate related activities.² Bonneville also relies on existing regional processes, and in particular the Northwest Power Planning Council

provide for Canadian participation in RTO West. British Columbia Hydro and Power Authority was a signatory, along with the Companies submitting these comments, to the RTO West filing utilities' Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000 in Docket No. RT01-35-005. Discussions continue with representatives in the Province of Alberta.

² In the SMD NOPR, the Commission acknowledged that "supply planning and retail customer demand response are the states' responsibility," and proposed "a resource adequacy requirement intended to complement existing state programs." SMD NOPR at P 14.

(the “Planning Council”), to address resource adequacy. The states and provinces that will be served by the RTO West system are well equipped to develop regionally appropriate solutions for the complex policy and technical issues that bear on resource adequacy. Stakeholders within the RTO West region have already demonstrated that they are willing to explore adapting or supplementing these institutions to enhance the region’s ability to provide for resource adequacy reliably and cost-effectively. Any final rules the Commission adopts under the SMD NOPR should recognize the primacy of these regional mechanisms to address resource adequacy.

With respect to the funding of transmission system upgrades and expansions, the Companies believe that the approach described in their Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000, filed in Docket No. RT01-35-005 on March 29, 2002 (the “Stage 2 Filing”), makes sense for the RTO West region.³ The proposal in the Stage 2 Filing is designed to promote market-based solutions while protecting system adequacy. If RTO West determines that it must use its authority to protect system adequacy, it will do so through a least-cost, public planning process. When the result of this process is an RTO West-mandated transmission project, RTO West will equitably allocate project costs to those who benefit from the project (as long as the benefiting parties would otherwise fail to meet their transmission adequacy obligations). At the same time, utilities with obligations to serve native load will be able to expand their systems as necessary to serve those loads, provided that they meet reliability and interconnection standards and recover the costs through charges to the

³ See pp. 52-55 of the filing letter to the Stage 2 Filing and accompanying Attachment I.

benefited loads. While resolving questions of funding alone will not assure that transmission system infrastructure keeps pace with changes in loads and resources (siting and cross-jurisdictional matters are among the other issues that must be addressed), any final Commission rules for SMD should be flexible enough to permit RTO West to implement the transmission expansion funding approach developed in the Stage 2 Filing.

In addition to questions of funding and other steps necessary to facilitate transmission system expansion, there are also questions concerning what obligations the sponsors of merchant transmission projects (those that do not seek regulated rates of return, but instead rely on market forces to facilitate cost recovery) should have with respect to subsequent system expansion. The Companies assume that any merchant project integrated with the RTO West system will be subject to the Commission's jurisdiction. Sponsors of these market-based expansion projects should therefore be required to sign an RTO West Transmission Operating Agreement. They would then be subject to the same interconnection conditions as any other transmission owner before moving ahead with their projects (meeting applicable reliability standards, for example). This does not mean, however, that merchant project sponsors should be obligated to invest in additional transmission facilities if they do not voluntarily elect to do so. Instead, where subsequent system expansion is concerned, merchant transmission project sponsors should have limited duties that require them to cooperate with the implementation of others' projects.

COMMENTS CONCERNING RESOURCE ADEQUACY

The Companies believe that state and provincial regulatory commissions, together with complementary regional institutions, are the appropriate bodies to address resource adequacy within the area to be served by RTO West-operated transmission facilities. It is neither appropriate nor necessary for the Commission to assert regulatory jurisdiction over resource planning. In the case of RTO West filing utilities that are Commission-jurisdictional, resource planning is properly, and exclusively, within the jurisdiction of the states. There are existing regional institutions, such as the Committee on Regional Electric Power Cooperation, that support and coordinate state-governed resource planning processes. These institutions and processes can evolve over time as needed. The Commission should not attempt to assert jurisdiction in this arena through SMD rules or by any other means. Commission-imposed resource planning requirements would be counter-productive because they would inevitably confuse regulatory accountability and could lead to conflicting regulatory mandates.

The power to decide what constitutes adequate resource availability cannot be separated from associated cost recovery. For Commission-jurisdictional utilities, cost recovery for generation to serve retail load is subject to the jurisdiction of state regulatory commissions. This is appropriate, because balancing the benefits of increased resource availability against the costs of building and operating those resources is necessarily a policy judgment. State agencies empowered to make these policy judgments also control utilities' ability to recover their costs of complying with state-mandated policies. Any approach that would separate the power to impose resource adequacy requirements from

the power to grant cost recovery would subject regulated utilities to unreasonable regulatory cost recovery risks.

For Bonneville, responsibility for regional resource adequacy is governed by the Pacific Northwest Power Planning and Conservation Act.⁴ Provisions of this Act establish the Planning Council,⁵ which is a compact among the states of Oregon, Washington, Idaho, and Montana. The Planning Council is charged with developing a resource adequacy plan that guides Bonneville's resource acquisition activities. Bonneville's resource acquisition activities are significant for the entire Pacific Northwest because many non-jurisdictional utilities rely, in whole or in part, on Bonneville for an adequate power supply. The Planning Council develops a 20-year plan for adequate and reliable energy for the Pacific Northwest portion of the RTO West region. The Planning Council has recently initiated an expanded process to examine resource adequacy across the entire RTO West region, as well as within the Western Interconnection as a whole.

A regional approach to resource adequacy is appropriate not only for jurisdictional reasons, but operational reasons as well. The extensive hydroelectric resources in the RTO West region are energy limited. A planning reserve margin based on capacity alone cannot meaningfully measure generation adequacy for these resources and therefore for the region as a whole. Further, the Columbia River's system of hydroelectric resources consists of both federal and nonfederal projects. These projects

⁴ 16 U.S.C. § 839 *et. seq.*

⁵ 16 U.S.C. § 839b.

are operated (and have been operated historically) on a coordinated basis to meet the electricity needs of multiple load-serving entities without regard to ownership of individual projects. They are integrated with complementary thermal resources through additional agreements and bilateral trade. The approach proposed under the SMD NOPR, which links particular units to specific load-serving entities to satisfy customer-specific adequacy requirements, is inconsistent with these operational practices. Many contracts in the Northwest do not assign ownership of the output from specific units to individual contract parties; rather, participants receive assigned shares of the combined production of the projects covered by the contracts.

Commission-driven resource adequacy requirements would conflict with existing regional practices and authorities, and they would lead to inequitable results. Even if the Commission could lawfully assert jurisdiction under the Federal Power Act to impose resource adequacy requirements on public utilities, not all existing load-serving entities, or potential new load-serving entities, are subject to the Commission's existing regulatory jurisdiction. In the RTO West region, significant loads are served by entities that are not Commission-jurisdictional. The potential for disparate treatment of loads based on whether their suppliers are Commission-jurisdictional could increase if additional retail loads gain access to wholesale markets or are entitled to choose among competing retail load-serving entities. Consequently, Commission imposition of a generation resource adequacy standard on jurisdictional utilities would be arbitrary and potentially unworkable. Jurisdictional utilities might be required not only to bear the costs of meeting their own standards, but also to bear increased risks if other entities do not

acquire adequate resources. Examples of increased risks that could be imposed on jurisdictional utilities include higher energy prices (caused by scarcity), operational problems, and heightened outage probability.

The Companies support the Commission's goal of fostering adequate investment in transmission and generation infrastructure. They urge the Commission to recognize that in the area to be served by RTO West, the region's existing regulatory and institutional structures – the state and provincial commissions, the Planning Council, the Northwest Power Pool, and others – provide the right mechanisms to address resource adequacy. The reach of these institutions can encompass all affected parties. They have the expertise and roles appropriate to address resource adequacy in a workable manner. Their approaches can evolve if necessary to complement and support institutions that have typically focused on regional economic issues from a broader perspective, such as the Western Governors' Association.

As noted above, the Planning Council recently initiated a regional process to discuss current methods for assessing resource adequacy and to explore the need for consistent methodology throughout the region. The initial meeting in this process was held on January 27, 2003, in Portland, Oregon.⁶ Invitations to participate in this process have been extended broadly to encompass utilities serving load across the RTO West area, representatives of seven state regulatory entities in the United States and one

⁶ The agenda for the initial meeting included: (a) a review of the current Northwest Power Pool reliability reporting process; (b) a review of the planning requirements of state commissions and boards of publicly owned utilities; (c) a review of current plans for resource adequacy; (d) initial exploration of areas needing improvement; and (e) discussion on appropriate scope, forum sponsorship, means of technical support and timeline for proceeding.

Canadian province, the Committee on Regional Electric Power Cooperation, the Northwest Power Pool, the Planning Council staff, and other interested parties.

This regional process will evaluate potential changes to the region's existing planning practices to make sure that there is a robust approach for planning resource adequacy. It will work to foster policies that apply consistent resource adequacy practices equitably to all load-serving entities in the region.

The Companies expect that as this process moves toward consensus within the RTO West region, the effort will be coordinated with the other western RTOs through discussions in the Seams Steering Group - Western Interconnection ("SSG-WI") forum. This voluntary process will promote compatible approaches to resource adequacy among all three of the currently proposed regional transmission organizations in the West.

If regional transmission organizations and the Commission seek constructive roles related to resource adequacy, the Companies believe that they should focus on protecting transmission customers in one state or province from being harmed by the failure of an electricity supplier in another state or province. As explained in the Stage 2 Filing,⁷ in RTO West this concern centers on Scheduling Coordinators. If RTO West is the mandatory provider-of-last-resort for imbalance energy (among other ancillary services), then a Scheduling Coordinator's failure to supply energy to the load for which it is responsible could force RTO West to provide imbalance energy to serve that load. This causes not only a short-term reliability problem but a potential long-term financial problem. The financial problem arises if the Scheduling Coordinator subsequently

⁷ See pp. 25-26 of the filing letter to the Stage 2 Filing and accompanying Attachments J3 and J4.

defaults on its obligation to pay for the imbalance energy (or is disqualified from acting as a Scheduling Coordinator). Unless a protective mechanism is in place ahead of time, RTO West, as a nonprofit corporation, could be placed in an untenable situation. It cannot justly recover the costs of the unpaid imbalance energy charges from its other (innocent) transmission customers. There must be a way for RTO West – indeed, any regional transmission organization – to prevent supply shortages in one state or province from “migrating” to others and to prevent failure of one Scheduling Coordinator from harming the customers of remaining, nondefaulting Scheduling Coordinators.

COMMENTS CONCERNING FUNDING OF TRANSMISSION SYSTEM UPGRADES AND EXPANSIONS

The planning proposal for RTO West as described in the Stage 2 Filing contemplates that transmission system expansions (or upgrades) will be implemented through activities in three broad categories: (1) system expansions voluntarily undertaken by a Participating Transmission Owner to meet its native load service obligations and facilitate service to pre-existing wholesale transmission service customers; (2) projects undertaken by market participants in response to the price signals from the RTO West congestion management system; and (3) projects resulting from RTO West’s use of its “backstop” authority to assure transmission adequacy or to compensate for the market’s failure to remedy chronic, significant commercial congestion.⁸ How transmission system upgrades or expansions are funded depends on where among these three categories a particular project falls. The Companies urge the Commission to

⁸ Portland General Electric Company and Avista Corporation have expressed concerns about the RTO West backstop planning authority proposal.

provide sufficient breadth and flexibility in its final SMD rules to accommodate the RTO West approach to funding transmission system upgrades and expansions.

Overview of RTO West Approach to Funding Transmission System Upgrades and Expansions

The RTO West planning proposal contemplates that RTO West will oversee upgrades and expansions to its transmission system through a proactive, inclusive, public planning process that will examine both wires and non-wires alternatives as potential solutions to adequacy and congestion problems. The entity (or a coalition of entities) that promotes and is responsible for the construction of a transmission project is referred to as the project sponsor.

When a project sponsor does not seek to invoke RTO West authority to allocate costs of a transmission system upgrade or expansion, RTO West's planning process will focus primarily on assuring that reliability and existing transfer capability are protected and that if parties other than the project sponsor wish to expand a project and assume resulting costs, they have the opportunity to do so. RTO West will do this through its "Conditions for Interconnection" (as set forth in the proposed RTO West Transmission Operating Agreement), which require RTO West to determine that:

- (i) the project sponsor has mitigated negative impacts to system transfer capability or reliability;
- (ii) the project sponsor has offered interested parties an opportunity to participate in its planning process and allowed such parties an opportunity to modify the proposed project in a manner that would increase transfer capability or reliability benefits, subject to the interested parties assuming responsibility for any increased costs; and
- (iii) the proposed project satisfies applicable interconnection requirements.

These Conditions for Interconnection will apply to any project subject to RTO West's planning authority, no matter how it is funded.

Projects that do not rely on RTO West authority to allocate project costs fall into two categories: those sponsored by market participants responding to congestion price signals ("Market-Based Participant Funding," in which cost recovery occurs through avoidance of congestion charges or the ownership of newly created financial transmission rights), and those voluntarily undertaken by a Participating Transmission Owner seeking to upgrade or expand its own transmission system to cover load service and pre-existing transmission obligations (in which cost recovery is through traditional regulatory processes). In these cases, if there is a least-cost standard that applies to a project sponsor, it is the project sponsor's responsibility to comply with it.

But if a project sponsor seeks to use RTO West's authority to allocate some or all of the costs of a transmission system upgrade or expansion, RTO West will impose its own least-cost requirement and will follow the principle of "Beneficiary Pays." Under the RTO West Transmission Operating Agreement, RTO West can invoke its backstop authority (and therefore allocate costs according to the Beneficiary Pays methodology) in any of four cases:

- (i) when RTO West has determined that a Participating Transmission Owner has not met applicable transmission adequacy standards;
- (ii) when a Participating Transmission Owner has failed to provide sufficient transmission facilities and operational tools (known collectively as "Congestion Management Assets") to balance its pre-existing transmission service obligations;

- (iii) when a Participating Transmission Owner has failed to restore total transmission capability as required by the RTO West Transmission Operating Agreement; or
- (iv) when, due to market failure, chronic, significant, commercial congestion has not been mitigated.

RTO West's Beneficiary Pays methodology can be implemented in either of two ways. First, RTO West may cause the construction of needed transmission facilities to remedy problems described above. Second, a project sponsor may request that RTO West allocate a portion of its project costs to others. To invoke this mechanism, the project sponsor must demonstrate that its project will confer benefits to the system because the project resolves another party's failure to meet transmission adequacy obligations⁹ or because the project mitigates chronic, significant, commercial congestion that the market has failed to resolve.¹⁰

The Companies recognize, and urge the Commission to bear in mind, that mechanisms to address funding for system expansions and upgrades will not, by themselves, assure that necessary projects move forward. Many project sponsors and load-serving entities that wish to expand the system may do so only if they believe they will receive a proper allocation of the benefits and costs resulting from the projects. This is critical to the effectiveness of Market-Based Participant Funding within RTO West. Many, if not most, transmission construction projects will encompass a multi-state area

⁹ The costs that RTO West can allocate to a benefiting party are capped at the avoided costs the benefiting party would have paid to implement the least-cost alternative required to fulfill its transmission adequacy obligations.

¹⁰ The RTO West Board of Trustees, in consultation with the RTO West market monitoring unit, must have demonstrated that specific instances of market failure have precluded cost-effective mitigation of

and some may even cross international boundaries. Many projects are likely to affect facilities that are not part of a regional transmission organization or that belong to non-jurisdictional entities. Acquisition of necessary rights-of-way must be addressed as well. These are not insignificant challenges.

State commissions and other appropriate bodies with applicable authority in the multi-jurisdictional RTO West region will need to work cooperatively with RTO West and project sponsors to provide timely and efficient decisions involving project approval, siting, and cost-benefit allocation. In its final SMD rules, the Commission should support the approach to funding transmission system upgrades and expansions that has been developed for RTO West through the Stage 2 Filing. At the same time, the Commission should promote regionally crafted solutions to the other challenges, beyond funding, that must be resolved before necessary future investments in transmission infrastructure can be realized.

COMMENTS CONCERNING TRANSMISSION EXPANSION OBLIGATIONS FOR MERCHANT TRANSMISSION FACILITIES

On November 26, 2002, the Commission requested comment on a series of questions dealing with exempting merchant transmission projects from provisions in the SMD NOPR's draft tariff (the "SMD tariff")¹¹ that relate to expansion obligations. These

chronic, significant, commercial congestion before a project claiming to mitigate that congestion is eligible for cost allocation under the Beneficiary Pays methodology.

¹¹ The expansion obligation in the proposed SMD tariff is included in sections 5.9 and 5.12 dealing with service availability. Section 5.9 requires expansion only if new transmission service or new CRRs are requested, but it does not appear to apply to transmission expansions planned by the Independent Transmission Provider for adequacy purposes (*see* SMD NOPR at PP 487-88) or to sponsor-planned and funded projects. The exact nature of the obligation of any transmission owner to expand under the SMD tariff is unclear, but it seems to be derived in part from the obligations imposed on transmission providers under the Order No. 888 Pro Forma Open Access Transmission Tariff.

questions were triggered by the specifics of the NEPOOL/Cross-Sound Cable case (NEPOOL, 100 FERC ¶ 61,259 (2002)). The Companies will address the question of what obligations should apply to sponsors of merchant transmission facilities with respect to subsequent system expansion from the perspective of the planning proposal in the Stage 2 Filing. These comments address the principles underlying the Commission's questions rather than responding to those questions individually.

The Companies recognize that transmission construction by merchants would improve system infrastructure, and the RTO West planning proposal provides for market-based projects. The Companies do not propose to encourage market-based projects by exempting them from obligations related to system expansion, however. The Companies believe any market-based project that is integrated with the RTO West transmission system will be subject to Commission jurisdiction. Therefore sponsors of these types of projects will be required to enter into RTO West Transmission Operating Agreements, as is the case with any other RTO West Participating Transmission Owner. This does not mean that sponsors of merchant facilities should be forced to make additional investments beyond the projects they voluntarily pursue. As provided in the RTO West Transmission Operating Agreement, any merchant project that becomes part of the RTO West system will have to satisfy the Conditions for Interconnection (described above in the section entitled "Comments Concerning Funding of Transmission System Upgrades and Expansions") and will be required to meet minimum obligations to cooperate with others' subsequent expansion projects. The RTO West proposal constitutes an

appropriate sharing of risks in exchange for the benefits all parties receive from being part of a common undertaking – the creation of an integrated electric power system.

The RTO West proposal is consistent with the theory behind SMD, which is that the market will provide efficient price signals that enable market participants to determine when and where it is beneficial for them to upgrade or expand the transmission system.¹² The least-cost expansion option for the transmission system may be expansion of merchant facilities. In that case, exempting merchant facilities from any duties to cooperate with further expansion will be a barrier to market response. This barrier would artificially increase benefits to merchant project sponsors and increase costs to expand the grid. These costs would ultimately be passed on to consumers through higher congestion costs until new facilities are built and through higher costs to obtain financial transmission rights by new construction.

Transmission Investment Encouraged

The Companies recognize the need for investment in the system's transmission infrastructure. Further, their intent in crafting the RTO West proposal has been to encourage investment, whether by traditional transmission providers or by potential merchant providers, through two important tools.

First, the RTO West congestion management system is designed to produce price signals that reveal the need for and nature of beneficial investments in RTO West controlled transmission facilities. In response to these price signals, project sponsors are

¹² SMD NOPR at P 3: "The Commission proposes to provide . . . the right pricing signals for investment in transmission and generation facilities."

expected to build projects using Market-Based Participant Funding for cost recovery. If rolled-in cost recovery were used for these types of projects, the price signals designed to motivate market response would be largely defeated.¹³

Second, under the RTO West Transmission Operating Agreement, Participating Transmission Owners agree to a set of obligations that specifically support upgrades and expansions. These apply whether a project is implemented voluntarily by a Participating Transmission Owner to expand or reinforce its own system, through Market-Based Participant Funding, or through an RTO West-mandated project using the “Beneficiary Pays” methodology. Briefly, the expansion-related obligations applicable to Participating Transmission Owners, or “Expansion Duties,” are:

- (i) permit interconnection of upgrades and expansion to their facilities;
- (ii) cooperate in obtaining siting, permits, licenses, shared use of rights-of-way, requests for sale or assignment of rights-of-way, and planning of third party upgrades; and
- (iii) exercise eminent domain authority if necessary to the extent permitted by law.

These Expansion Duties do not obligate the Participating Transmission Owner to incur uncompensated costs or assume any of the costs of an expansion project; those are to be borne by the project sponsor. In exchange for a project sponsor assuming the full cost of the new facilities, RTO West will grant the project sponsor the set of transmission rights that were enabled by the additional transfer capability created.

¹³ Some of the Companies believe congestion price signals alone may not be sufficient to motivate all necessary system expansion through Market-Based Participant Funding, and that RTO West may need to develop other appropriate expansion incentives.

An Integrated System Interconnection

The rationale for requiring merchant projects to accept a limited set of Expansion Duties analogous to those described above for Participating Transmission Owners (without imposing an obligation to finance further expansion) is based on the integrated nature of the transmission system. Once the circuit breakers are closed on merchant transmission facilities, those facilities become part of an integrated system, *i.e.*, an Interconnection. The parts of the Interconnection (synchronized generators, transformers, lines, circuit breakers, relays, controls, etc.) become electrically interdependent. All owners of facilities within the Interconnection receive benefits from being part of a whole much bigger than themselves. When a line has a fault and is taken out of service, the rest of the transmission system instantly accepts the flows previously carried by that line. When a generator drops off line, governors of remaining generators respond and flows adjust to continue to serve the total load on the system. Even DC lines, which are often portrayed as independent of the integrated system, depend upon the AC system for commutation voltage and system support during line outage/load rejection events on the DC line.

The form of owner capitalization and the business models of the facility owners have no bearing on the physics of interconnected operations and these automatic back-up adjustments. Each investor in the system is also a recipient of benefits from this common creation made by collective investment. As beneficiaries of integration with the greater system, merchant project sponsors should be treated like any other transmission owner.

Obligations for Merchant Transmission Providers

If merchant providers are to be encouraged to invest in the transmission system, they must be able to bound the risks to which they will be exposed. An open-ended obligation for future, unspecified investment could effectively overwhelm the economics of merchant projects. The obligations of an owner of merchant transmission facilities should therefore be keyed to enabling future expansion, rather than to making new investments.

In addition to the Conditions for Interconnection described above, the Companies believe that the same Expansion Duties that apply to Participating Transmission Owners are appropriate for the owners of merchant transmission facilities once their facilities have been constructed and become a part of an Interconnection. If another project sponsor seeks to upgrade or expand the system after the completion of a merchant project, these obligations would require the owner of the merchant transmission facilities to:

- (i) permit the interconnection of upgrades and expansions to their facilities;
and
- (ii) cooperate in obtaining siting, permits, licenses, shared use of right-of-way, requests for sale or assignment of rights-of-way, and planning of third party upgrades.

It seems unlikely that merchant transmission providers will have eminent domain authority. If they do have this authority, however, and exercise of the authority is required to build additional transmission, merchant providers should have a duty to exercise that authority to the extent authorized by law, with costs to be paid by the sponsor of the expansion.

The merchant provider must enable subsequent investment by cooperative action, but it should not be required to bear the costs associated with others' projects. Further, the transfer capability created by the merchant provider's earlier investment must be maintained by any subsequent expansion project. This limited set of Expansion Duties balances the incentives needed for new investment and the management of risks associated with merchant transmission projects against the potential for a merchant project to hinder further expansion of the system by others.

Granting a blanket exemption to a merchant provider from any duties related to system expansion may lead to undesirable outcomes. A merchant provider should incur the cooperative Expansion Duties described above. Its facilities should be considered as part of the whole system for the purpose of identifying best solutions to future system problems. No project sponsor should be able to block others from undertaking system expansion projects that will be beneficial for the region. This consideration is particularly important when the difficulty of obtaining transmission rights-of-way is considered. All entities that own facilities that make up the transmission system should be obligated to cooperate with respect to available rights-of-way, siting, and similar matters so that their facilities will not act as a barrier to effective wholesale competition among generators.

CONCLUSION

The Companies thank the Commission for the opportunity to submit these comments and for its consideration of the issues they address.

Dated this 28th day of February, 2003.

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PUGET SOUND ENERGY, INC.

NEVADA POWER COMPANY and
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